STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 26, 2001
v	No. 225087 Muskegon Circuit Court
JOHN EDWARD BEASLEY, Defendant-Appellant.	LC No. 99-043391-FH

Before: Gage, P.J., and Jansen and O'Connell, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of attempting to disarm a police officer, MCL 750.479b(2)(a), resisting and obstructing a police officer, MCL 750.479, and domestic violence, MCL 750.812. He was subsequently sentenced as a fourth-offense habitual offender, MCL 769.12, to concurrent terms of three to twenty years' imprisonment, three to ten years' imprisonment, and ninety days' imprisonment, respectively. Defendant appeals as of right and we affirm.

The offenses in this case occurred on March 28, 1999, and defendant was on parole at that time. Defendant was arrested and incarcerated on March 28, 1999, and his trial began on December 15, 1999. On appeal, defendant argues that his convictions must be vacated because he was denied his constitutional right to a speedy trial[1] because of the 8 ½ month delay between his arrest and the commencement of trial. He also argues that his convictions must be vacated because the 180-day rule under MCL 780.131[2] was violated.

In assessing whether defendant's constitutional right to a speedy trial was violated, the following factors are to be balanced: (1) the length of the delay; (2) the reason for the delay; (3) defendant's assertion of the right; and (4) prejudice to defendant. *Barker v Wingo*, 407 US 514, 530; 92 S Ct 2182; 33 L Ed 2d 101 (1972); *People v Hill*, 402 Mich 272, 283; 262 NW2d 641 (1978). Here, the length of the delay, 8 ½ months, does not trigger the eighteen-month

[1] See US Const, Am VI; Const 1963, art 1, § 20.

[2] The statute requires that an inmate be brought to trial within 180 days after the prosecution receives notice that the defendant is incarcerated and requests final disposition of the warrant, indictment, information, or complaint.

presumption of prejudice. *People v Cain*, 238 Mich 95, 112; 605 NW2d 28 (1999). Although the reason for the delay was primarily attributable to the prosecution, defendant did not assert his constitutional right to a speedy trial in the trial court. The record is quite clear that defense counsel raised this issue only under the statutory 180-day rule and did not argue or analyze the constitutional requirements. Moreover, there is no prejudice to defendant and, indeed, defendant does not assert any prejudice to his defense at trial. His argument is premised on the assertion that he was incarcerated while awaiting sentencing and not given any sentence credit for this time served. Defendant, however, was not entitled to sentence credit because he was on parole when he committed the present offenses, *People v Watts*, 186 Mich App 686; 464 NW2d 715 (1991), and this argument does not amount to prejudice under the constitutional inquiry.

Consequently, defendant was not denied his constitutional right to a speedy trial.

Defendant's assertion that the 180-day rule under MCL 780.131 was violated similarly fails because it is well settled that the 180-day rule does not apply to incarcerated parolees unless and until parole is revoked. *People v Chavies*, 234 Mich App 274, 279; 593 NW2d 655 (1999); *People v Metzler*, 193 Mich App 541, 545; 484 NW2d 695 (1992); *People v Von Everett*, 156 Mich App 615, 618-619; 402 NW2d 773 (1986). In this case it is uncontested that defendant was on parole at the time of his arrest. Defendant's parole was not revoked until November 9, 1999, a little over one month before the commencement of his trial. Therefore, the trial court did not err in denying defendant's motion to dismiss based on an alleged violation of the 180-day rule.

Affirmed.

/s/ Hilda R. Gage
/s/ Kathleen Jansen
/s/ Peter D. O'Connell